



UNIVERSITY
OF
JOHANNESBURG

COPYRIGHT AND CITATION CONSIDERATIONS FOR THIS THESIS/ DISSERTATION



- Attribution — You must give appropriate credit, provide a link to the license, and indicate if changes were made. You may do so in any reasonable manner, but not in any way that suggests the licensor endorses you or your use.
- NonCommercial — You may not use the material for commercial purposes.
- ShareAlike — If you remix, transform, or build upon the material, you must distribute your contributions under the same license as the original.

How to cite this thesis

Surname, Initial(s). (2012). Title of the thesis or dissertation (Doctoral Thesis / Master's Dissertation). Johannesburg: University of Johannesburg. Available from: <http://hdl.handle.net/102000/0002> (Accessed: 22 August 2017).

THE FOURTH INDUSTRIAL REVOLUTION AND THE ACHIEVEMENT OF EQUALITY FOR WOMAN IN WORK

by

Kagiso Khoabane

MINI DISSERTATION

Submitted in partial fulfillment of the requirements for the degree

MAGISTER LEGUM (LLM)

in

COMMERCIAL LAW

in the

FACULTY OF LAW

at the

UNIVERSITY OF JOHANNESBURG

UNIVERSITY
OF
JOHANNESBURG

SUPERVISOR: DR. M van Staden

December 2019

ABSTRACT

The fourth industrial revolution has ushered in a technological era which promises a broader and quicker transfer of data and information captured in modern day systems than the third industrial age. This era promises great opportunity throughout numerous spheres of life with its greatest shortcoming being imparting the necessary skills and education on workers so as to survive in this era. The focus of this investigation is centred on the inequalities that women continue to face in the world of employment and the policies such as affirmative action and treaties that have been implemented to nullify these prejudices. Throughout history, women have succumbed to unequal working conditions as a result of unequal pay when compared to their male counterparts which further includes gender based acts such as harassment. To this end, women still face less favourable working conditions to that of men.

The purpose of this study is to explore and understand the influence of the fourth industrial revolution on the future of the inequalities women face in work while analysing and deconstructing the implications of the Employment Equality Act alongside treaties as tools to reduce gender inequality in employment.

The importance of higher education and skills development as solutions to alleviate the inequities women face in working conditions were investigated. A fundamental study further evaluated how legal reasoning interacts with social hierarchies based on gender and gender based implications. In doing so, the writer was able to assess the gender gaps experienced between men and women in employment. A law reform approach through work policy introductions were suggested in attempt to find solutions to aid women in work. Fundamental research was utilised in analysing the introduction of the fourth industrial revolution and the social impact it would have not only on women nationally but in African communities as well.

The research study revealed that despite policies like the Employment Equity Act and the SADC Protocol on Gender and Development being implemented to aid in achieving equality for women in work, closing the gender based gap would prove challenging. The reason hereto is because men still dominate industries like Science, Technology, Engineering and Mathematics (or STEM fields) which are important for growth in an evolving society thus hampering the sustainable development of women. A country like South Africa, and most

likely the rest of the African continent, will struggle to adapt to the advances imposed by the fourth industrial revolution due to a lack of resources and tools such as reliable infrastructure and electrical driven technologies to accommodate the new industrial age. Despite the suggestion of improving skills development and higher education in our society, unemployment and patriarchy still serve as obstacles toward achieving equal rights in employment for our women. In short, for newly suggested policies to work in light of the fourth industrial revolution, a legal and social reform will have to be adopted in society as a whole.



ACKNOWLEDGEMENTS

To my mother, thank you not only for your never ending support and love but for also molding me into the man that I am today and it is because of you I can take on any challenge and make it out on the other side stronger.

To my sister, thank you for protecting me always, advising me and ensuring that an older brother was never necessary in my life. You remain my role model now and forever.

To my late grandfather, when I become an independent man I want to be the mirror image of your heart and soul.

To my dad, life has separated us for long, but I intend to have the heart and bravery you posses. Thank you for believing in all of my efforts.

To Dr Van Staden, your professionalism and experience as my supervisor on this study has allowed me to better this study from start to finish which in turn, further motivates me to tackle similar work of this nature in the future. I have no doubt that you are destined to becoming an esteemed professor in the near future.

To my parish priest, Fr Bruce, thank you for your continuous support and efforts toward all my written contributions in school and career. You have always lent a helping hand when I needed it.

To Caleb and Lesego, thank you for your continuous proof reading, support and overall significant commentary on the study. Associating with peers as intellectually sound as you both has served as a confidence boost to my abilities.

To Marothi, you have shown me that blood does not always mean family. You saw a greater person in me before I could and for that you will always be my brother.

To my extended family in Witbank and Volksrust, no amount of distance can stand between the support you have showed towards me and the belief you have exercised in my abilities. Thank you.

And finally, to the Almighty, I owe everything to you, that will never change, thank you.

LIST OF ABBREVIATIONS

AA	Affirmative Action
BCEA	Basic Conditions of Employment Act
CCMA	Commission for Conciliation, Mediation and Arbitration
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
EEA	Employment Equity Act
ILJ	Industrial Law Journal
LC	Labour Court
LAC	Labour Appeal Court
LRA	Labour Relations Act
SA	South Africa
SADC	Southern African Development Community
STEM	Science, Technology, Engineering and Mathematics

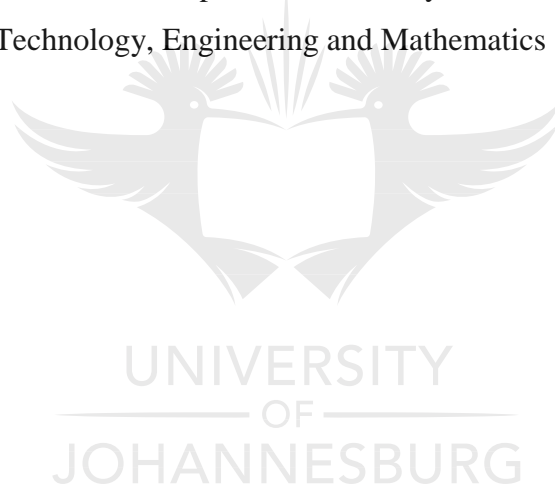


TABLE OF CONTENTS

CHAPTER 1: INTRODUCTION, PROBLEM STATEMENT, AIMS OF RESEARCH AND METHODOLOGY.....	9
1.1 Introduction.....	9
1.2 Problem statement.....	10
1.3 Aims of the study	11
1.4 Method of research	11
CHAPTER 2: INTRODUCING THE NEW INDUSTRIAL AGE AND CURRENT REALITIES	13
2.1 The new age of invention and women in the workplace.....	13
2.2 Replacing human capital	15
2.3 Justified replacement	18
CHAPTER 3: WOMEN AND EQUALITY IN WORK	20
3.1 Affirmative action: a vehicle for change.....	20
3.2 Unequal pay for women.....	23
3.3 Sexual Harassment and the new digital age.....	28
3.3.1 Sexual harassment in the new digital age.	30
CHAPTER 4: SKILLS DEVELOPMENT: PREPARING FOR AND THRIVING IN THE NEW INNOVATIVE AGE	33
4.1 Employee categories: the precariat worker	33
4.1.1 Underemployed.....	33
4.1.2 Underpaid.....	33
4.1.3 Knowledge entrepreneurs	34
4.1.4 Vagabond	34
4.2 Skills development among the already employed.....	35
4.3 The influence of higher education	36
CHAPTER 5: THE FUTURE OF WOMEN IN AFRICA AND THE POLICIES IN LINE TO ADVANCE EQUALITY OF WOMEN IN WORK	39
5.1 The 4IR's influence on women in Africa.....	39

5.2 Policies advancing women equality	39
5.2.1 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	39
5.2.2 SADC Protocol on Gender and Development	40
CHAPTER 6: CONCLUSION AND RECOMMENDATIONS	42
6.1 Conclusion	42
6.2 Recommendations.....	43
BIBLIOGRAPHY	45



CHAPTER 1: INTRODUCTION, PROBLEM STATEMENT, AIMS OF RESEARCH AND METHODOLOGY

1.1 Introduction

The modern era is one filled with technological innovation which yields numerous opportunities in employment especially to those with the relevant skills and qualifications.¹ Through the decades, women have experienced lesser opportunities to prove their overall value be it in sport, politics or everyday employment opportunities.² As a consequence, women have to work twice as hard to deliver any recognisable results as opposed to that of their male counterparts.³ Thus, women have to endure unequal payment for their labour and settle for mediocre roles in employment.⁴

However, The South African government has in the past introduced policies to bridge the demographic gaps left in employment, economic development, social justice and labour peace.⁵ These include: the Employment Equity Act, Labour Relations Act and the Constitution of the Republic of South Africa. The fundamental purpose in these frameworks is the achievement of equality for all bearing in mind the empowerment and sustainable development of women in the workplace.

Within this context, the policies of employment equity and affirmative action are aimed at addressing the inequalities experienced by women in employment.⁶ This study investigates and seeks to understand the implications that the fourth industrial revolution may yield in addressing the inequalities between men and women in work. The world has experienced four industrial revolutions. The first utilised steam engines for mechanical production, the second introduced electricity and a division of labour to increase mass production, the third introduced information technology and automated production and now we have reached the fourth.⁷ Like the third, the fourth industrial revolution introduced a digital transformation

¹ Gleason *Higher Education in the Era of the Fourth Industrial Revolution* (2018) 5.

² Laubscher "Equal pay for equal value: A South African Perspective" 2016 *Industrial Law Journal* 804 804.

³ Laubscher (n 2) 804.

⁴ Laubscher (n 2) 804.

⁵ s 1 of the LRA and s 2 of the EEA.

⁶ See s 9 and s 23 of the Constitution of the Republic of South Africa.

⁷ Effoduh "The fourth industrial revolution" 2016 *Transnational Human Rights Review* 76 77.

through robotisation, digitalisation and automation which strategically influences the methods and means that work is advanced today.⁸

Therefore, the purpose of this study is to explore and to comprehend the conditions that women currently face in work through the implementation of the policies of employment equity and affirmative action and the influence, if any, the fourth industrial revolution has on these conditions. It is therefore hypothesized that through the investigation and understanding of the above policies of equity in employment that the writer will be able to deduce whether or not the fourth industrial revolution will reduce gender based gaps in employment.

This chapter outlines the background of the problem statement, research aims and methodology used to conduct this study.

1.2 Problem statement

Gender inequality in the workplace remains a constant obstacle for women and the purpose of this study is to determine whether the fourth industrial revolution will bring about any change in this regard. If for example, it would take 50 years for women to receive equal working conditions as men, how will the fourth industrial revolution lessen the estimated years, minimize gender inequality, or affect the role that women will be able to play in new digital workplaces?⁹ Automation has increased job losses in male dominated sectors (such as manufacturing and construction) due to machine integration.¹⁰ On the other hand, however, some female dominated sectors cannot be substituted as they rely significantly on human attributes such as empathy and compassion to thrive (e.g. psychology, nursing and event planning).¹¹ However, because men still tend to dominate STEM fields, this increasing demand for specialized technical skills will likely exacerbate gender inequalities.¹²

In light of the problem formulated above, the research questions are formulated as follows:

- a. What are the implications of employment equity and affirmative action policies for women in work?
- b. Can the fourth industrial revolution reduce or increase gender inequalities in work?

⁸ Hutchinson “Legal research in the fourth industrial revolution” 2017 *Monash University Law Review* 567 572.

⁹ Effoduh (n 7) 79.

¹⁰ Effoduh (n 7) 79.

¹¹ Effoduh (n 7) 79.

¹² Effoduh (n 7) 79.

- c. Can skills development and higher education aid women in the fourth industrial revolution?

1.3 Aims of the study

The aims of the research are to:

- a. Analyse and define the concepts of equality in light of “affirmative action”, “equal pay” and “sexual harassment”.
- b. Determine how the fourth industrial revolution will assist in the achievement of equality for women in work.
- c. Identify the obstacles and consequences surrounding skills development and higher education for the future of women in work.

1.4 Method of research

In conducting this study, the researcher made use of both the fundamental research and law reform research methods. Fundamental research is driven by curiosity and the desire to expand information in a specific research area. Fundamental researches primarily aim to answer the questions of why, what or how. Law reform or legal reform examines existing laws and implementing change in a legal system in order to bring about justice or efficiency. As a sub division under the former, the researcher made use of the feminist legal theory. The feminist legal theory is dedicated to the reshaping of the law and its approach to gender. This approach is evident throughout all the chapters of this study with a sharp focus in chapter three and chapter five of this study. The researcher visits and explores policies in line with equality like the EEA and AA in order to formulate a road map of how laws have and must reshape to accommodate women more so in employment. Within the feminist legal theory lies a model referred to as the ‘sexual difference model’ which suggests that differences between women and men puts one sex at a disadvantage, therefore the law should compensate this differentiation accordingly.

In the law reform approach, the researcher relied on numerous tools ranging from case law, journals, books and legislation in order to formulate and propose a law reform policy particularly for women in work. Through the study of existing legal materials, the researcher was able to grasp where our law is currently in the struggle of gender inequalities particularly in employment.

In light of the fourth industrial revolution, the writer had to adopt a post-modernist legal theory approach complimenting the feminist theory in the new digital age. The focus of the study is centred on the fourth industrial revolution neutralizing gender based gaps in modern employment. In order to achieve this, the researcher had to consider and understand existing legislation in order to formulate an understanding of how the law is and should be structured to accommodate women in work in the new technological age.



CHAPTER 2: INTRODUCING THE NEW INDUSTRIAL AGE AND CURRENT REALITIES

“We are at the beginning of a revolution that is fundamentally changing the way we live, work, and relate to one another. In its scale, scope and complexity, what I consider to be the fourth industrial revolution is unlike anything humankind has experienced before.”¹³

2.1 *The new age of invention and women in the workplace*

The fourth industrial revolution is an era arising from a series of breakthroughs in data storage, connectivity, analytics, materials science, bioengineering, and more.¹⁴ This revolution in technology seeks to solve various problems that have arisen from the previous three industrial revolutions, thus improving human conditions.¹⁵ However, the ongoing fusion between humans and robots will undoubtedly also produce massive and relatively unknown changes that will influence governments, scientists, and corporate heads to cross lines of ethics, safety, and reason.¹⁶ This current industrial revolution has the potential to cause greater disruption than its predecessors because the displacement of human workers is projected to be higher than before.¹⁷ With such a large and growing number of people connected by technology, the potential for sharing information and finding peaceful means for solving problems is massive.¹⁸ The challenge is to remain focused on harnessing and utilizing rapid advancements in technology for the betterment of humanity.

The lines between the real world and the virtual world of technology are becoming increasingly blurred as larger segments of society are inundated with the workings of machines.¹⁹ It is not individual technology that is creating this new industrial revolution, but the convergence of many technologies, new forms of energy generation and storage, and innovative business models, all of which together are being used to create something new and unpredictable.²⁰ Invention is a continuous phenomenon but what does this reveal for our women particularly in the workplace?

The future of employment particularly in the fourth industrial revolution remains an open debate. With a significant rise in automaton, personnel currently employed in “routine

¹³ Boyer *The Robot in the Next Cubicle: What You Need to Know to Adapt and Succeed in the Automation Age* (2018) 20.

¹⁴ Boyer (n 13) 20.

¹⁵ Boyer (n 13) 20.

¹⁶ Boyer (n 13) 20.

¹⁷ Boyer (n 13) 21.

¹⁸ Boyer (n 13) 21.

¹⁹ Boyer (n 13) 21.

²⁰ Boyer (n 13) 21.

intensive occupations” such as personal assistance or call centres are more likely to be replaced by computerised systems.²¹ The cost of work-based efficiency will be guaranteed however, it goes without saying that most people employed in the above categories are women.²² In SA, the labour market is more favourable to men, which is alarming based on the notion that the gender digital gap is broadening mainly because women are less digitally literate and are not exposed to technological opportunities as men.²³ In addition, due to an inherent burden of care and domestic duties that women shoulder alongside employment responsibilities, women as a result, have less time as opposed to their male counter-parts to partake in programs to further their education and training.²⁴

On the other hand, however, a number of female dominated sectors cannot be replaced as they depend massively on human traits like empathy and compassion to thrive such as nursing and psychology.²⁵ Be that as it may, because men still firmly dominate STEM, this elevation in demand by the new digital age for specific technical skills will likely worsen gender inequalities.²⁶ Unfortunately, through unequal pay and sexual harassment which is discussed broadly below, men frustrate the development of women studying or working in STEM.²⁷ Gender induced inequities are the biggest challenges that women face in employment which result in minimal or no recognition of women’s efforts. The question then becomes what influences this gap as outlined above?²⁸

According to Bouman, the answer lies in social norms coupled by bad story telling. She asserts that when the achievements of pioneers such as Einstein and Newton are discussed (white males as she refers) their success is produced in independence as if they had no assistance in reaching their milestones.²⁹ Now when looking at Bouman’s triumph of creating algorithms that made it possible for a photo of a black hole in space to be taken, commentators made it seem as if she was merely a team leader of a hundred workers under her guidance.³⁰ So in a nutshell her success is linked to team work whilst the former male

²¹ Adams “Fourth industrial risks- leaving women behind”<https://www.thesouthafrican.com/business-finance/fourth-industrial-revolution-risks-leaving-women-behind> (2019-09-11).

²² Adams (n 21).

²³ Adams (n 21).

²⁴ Adams (n 21).

²⁵ Effoduh (n 7) 79.

²⁶ Effoduh (n 7) 79.

²⁷ Bhardwaj and Imafidon “Women and the fourth industrial revolution”
<https://www.chathamhouse.org/expert/comment/women-and-fourth-industrial-revolution> (2019-09-11).

²⁸ Adams (n 21).

²⁹ Bhardwaj and Imafidon (n 27).

³⁰ Bhardwaj and Imafidon (n 27).

pioneers are granted individual recognition in their respective success stories. In turn, this creates a gap stretching narrative when considering the fact that success then becomes a male driven concept as opposed to one which is gender neutral. This is one of the reasons women face continuous strain in STEM fields as highlighted above.

Another point to consider is the set of opportunities that the new industrial age affords women working in industries where one does not have to be physically present on site.³¹ With an industry such as mining, one would have to be there physically applying their trade in the mines. However, technological roles introduced by the digital age will ensure that the above complex positions in these industries will be able to be done from a safe distance.³² So there is the benefit for women to be able to learn, train and work at a safe distance in these roles, which would ensure that more women could be employed in these traditionally male dominated industries.³³ The technological transition has been criticized for the negative impact it could have on workers who could increasingly be replaced by these technologies, with women expected to be more disproportionately affected than men.³⁴

2.2 Replacing human capital

The field of robotics is revolutionizing the manufacturing industry, which in some instances is considered to be beneficial for the employer, employee, and for the customer.³⁵ It is emphasised by corporate leaders that automated robotic machines may not only improve financial security, reduce employee training and the expenses accompanied by it, improve overall production efficiency but also increase pay for expert worker operations, reduce occupational hazards and as a result also minimize healthcare expenses, and reduce overall cost for customers.³⁶ These forecasts are indeed factual and greatly welcomed by interested investors set to profit from the technological advancements. Despite the promising future highlighted in this paragraph, how will it in fact aid in retaining current employee occupations?

It goes without say that new technologies will dramatically alter the nature of work across all industries and occupations.³⁷ The uncertainty however, is evident in determining to what

³¹ Bhardwaj and Imafidon (n 27).

³² See s 9 of the Occupational Health and Safety Act 85 of 1993.

³³ Bhardwaj and Imafidon (n 27).

³⁴ Bhardwaj and Imafidon (n 27).

³⁵ Boyer (n 13) 23.

³⁶ Boyer (n 13) 23.

³⁷ Boyer (n 13) 21.

lengths automation will be a substitute for current labour, how long it will take and how far will it go?³⁸ To grasp this reality, we have to understand the two competing effects that technological innovation will yield on the employment sector.³⁹ First, there is a negative impact which sees technology replace human capital as the most important source in labour.⁴⁰ Secondly, the positive perception is that as times change technological advancement is necessary to create new working opportunities primarily with occupational demands surfacing.⁴¹ Human beings are masters of adaptation, it is only a matter of time before we adapt with technological advancement as the latter theory suggests.⁴²

Technology has always reduced productivity in certain occupations but in turn, increases it in occupations that are similar in nature.⁴³ Take the taxi industry for example. It has been around for decades, however, with the introduction of Uber, the mini bus taxi has somewhat fallen out of favour with a large number of people.⁴⁴ This is the result of the introduction of an app structured transport service which individuals have the control off at the palm of their hands.⁴⁵ The writer believes that despite technology being a constant revolution in society, it only gains momentum based on the popularity of the innovation in question and whether society decides whether to endorse it or not. However, in certain cases like Uber for example, uncertainty becomes apparent when considering the employer-employee relationship.⁴⁶ In the case of *Uber SA Technology Services (Pty) Ltd v National Union of Public Services & Allied Workers*,⁴⁷ the question before the court was whether Uber drivers were in fact Employees of

³⁸ Schwab *the fourth industrial revolution* (2017) 35.

³⁹ Schwab (n 38) 35-36.

⁴⁰ Schwab (n 38) 36.

⁴¹ Schwab (n 38) 36.

⁴² Schwab (n 38) 36.

⁴³ Schwab (n 38) 36.

⁴⁴ Mokoena "Are uber drivers employees or independent contractors? A comparative analysis" 2018 *Industrial Law Journal* 1453 1454.

⁴⁵ Mokoena (n 44) 1545, Uber classifies itself as a technology company as opposed to a transportation company. It's central characteristic is a mobile application, which is downloaded by users desiring transport in order for them to connect to drivers within the area who have signed up with Uber to provide this service."

⁴⁶ s 200A of the Labour Relations Act 66 of 1995 reads as follows: "

(1) Until the contrary is proved, for the purposes of this Act, any employment law and section 98A of the Insolvency Act 24 of 1936, a person who works for, or renders services to, any other person is presumed, regardless of the form of the contract, to be an employee, if any one or more of the following factors are present-

(a) the manner in which the person works is subject to the control or direction of another person;
(b) the person's hours of work are subject to the control or direction of another person;
(c) in the case of a person who works for an organization, the person forms part of that organisation;
(d) the person has worked for that other person for an average of at least 40 hours per month over the last three months;

(e) the person is economically dependent on the other person for whom he or she works or renders service;

(f) the person is provided with tools of trade or work equipment by the other person; or

(g) the person only works for or renders services to one person."

⁴⁷ 2017 ZACCMA 1 (CCMA).

Uber or merely independent contractors was considered.⁴⁸ Before the Commission for Conciliation, Mediation and Arbitration, the commissioner held that, Uber drivers were in fact employees of Uber and not independent contractors.⁴⁹ On review in the Labour Court, the court overturned the initial ruling made by the commissioner that there was no real contract between the drivers of Uber and Uber SA, the implication thereof being that drivers that make use of the Uber app to transport people or goods are independent contractors and are not employees of Uber SA.⁵⁰

In light of the new digital age which promises a machine driven future one cannot help but ignore the following questions: in the event that robots are placed as staff members in an organisation, would such robots eventually gain a seat on the recruitment panel and would it be blind to race, gender, or even age?⁵¹ If so, is this a desirable result? Will robots understand the dynamics currently impacting the economy and employment fields?

The writer believes that the social impact which continues to burden our women will be thinned by the implementation of robotics. Take for example the implementations of systems into households which can cook, clean or even look after children. Provided that women approve of these systems and that the systems themselves have been declared sufficient to operate in homes women can focus more on their careers or other areas of life sustaining growth and development.⁵² New systems such as Skype can assist in the conducting of interviews from the comfort of your homes.⁵³ For our women this is advantageous on two accounts. Firstly, women can still attend interviews when they are on their monthly cycles or

⁴⁸ Fourie "Non standard workers: the south African context, international law and regulations by the European union" 2008 *Potchefstroom Electronic Law Journal* 110 116 provides the following explanation of what an independent contractor is:

"Workers should be treated as independent contractors if they truly are independent entrepreneurs performing services for clients *i.e* if they present themselves to the general public as an established business presence, have a number of clients, bear the economic risk of loss from their work and the like. Workers who are economically dependent on the entity for whom they perform services generally should be treated as employees. Factors such as low wages, low skill levels and having one or a few employers should all militate against treatment as independent contractors."; *Uber SA Technology Services (Pty) Ltd v National Union of Public Services & Allied Workers* 2017 ZACCMA 1 (CCMA) par 8; Section 213 of the Labour Relations Act 66 of 1995 defines employee as:

(a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration, and
(b) any other person who is in any manner assists in carrying on or conducting the business of an employer."

⁴⁹ *Uber* (n 47) par 52.

⁵⁰ *Uber SA Technology Services (Pty) Ltd v National Union of Public Services & Allied Workers* 2018 39 ILJ (LC) par 73.

⁵¹ Effoduh (n 7) 80.

⁵² Boyer (n 13) 42.

⁵³ Guerra *Organizational Transformation and Managing Innovation in the Fourth Industrial Revolution* (2019) 9.

even submit work away from the office. Secondly, women would not have to brave the roads in undesirable times, thus reducing the risk of being subjected to rape, theft or other forms of violence they may experience.

2.3 Justified replacement

Replacing human capital is a certainty, the only solution to this fact is delaying the transition as much as possible while adapting to the change as humans as much as possible. However, it is not all blurred. As individuals there are quite a number of areas that do not even bother us in the slightest or we don't even fancy being a part of. As a suggestion, the writer believes that technology should suit us and not *vice versa*. It would therefore, become convenient to utilise technologies in tasks overlooked by people as follows:

1. Occupations which are less favoured by the general public should be left to automation. This comprises of jobs that require a certain level of concentration as opposed to creativity. These would be assembly line jobs where the occupants follow a strictly based routine to finish a product before passing it to the next person, mostly in factories.⁵⁴
2. Jobs filled with hazardous consequences like mining, manufacturing or nuclear energy. Replacing human labour guarantees unnecessary injuries thus preventing liability.⁵⁵
3. Automatic Teller Machines are quite exemplar in this regard. They are simple step based machines which could be incorporated in other similar occupations or demands in the economy.⁵⁶
4. Jobs that are unwanted by humans: It has become increasingly difficult to recruit qualified crew members willing to stay away from home for months while drifting at sea. When carrying non- perishable goods, autonomous cargo vessels are more convenient because they allow saving on accommodation expenses for the crew and remove the bulk of associated utilities (*e.g* heating and plumbing).⁵⁷

With the above discussion as a backdrop, it becomes evident that investment in human capital is necessary for multiple purposes such as finalizing key decision making, problem solving, and process monitoring (*e.g* programming and maintaining machinery). Even in a fully automated working environment, humans are still indispensable. When new technologies are

⁵⁴ Dhakal *The Transition from Graduation to Work* (2019) 174.

⁵⁵ Dhakal (n 54) 174.

⁵⁶ Dhakal (n 54) 174.

⁵⁷ Dhakal (n 54) 174.

firstly introduced, humans are needed to finalize and coordinate the implementation of tasks. When systems are put into operation, people need to perform complex tasks like trial runs, endurance tests and maintenance duties. Humans also have the capacity to upgrade their skills ensuring that they are equipped when technological advancements launch.



CHAPTER 3: WOMEN AND EQUALITY IN WORK

“Women’s rights are human rights and they include all life aspects, but are not limited to life, food, education, employment, political participation, freedom from violence and economic well-being. The link between gender equality, women’s empowerment and sustainable development has continued to gain recognition over the past few decades. One of the goals of the UN Charter is to ‘to re-affirm faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women.’”⁵⁸

3.1 Affirmative action: a vehicle for change

For one to fully grasp the fundamental concept of AA, it is necessary to be well acquainted with the concept of equality. The concept of equality and the application thereof is paramount in our Constitution. Section 1 of the Constitution establishes that the “achievement of equality” is one of its foundational values.⁵⁹ Within the Bill of Rights itself, the right to equality is listed as the first substantive right.⁶⁰ Section 39(1)(a) of the Constitution places an obligation on courts, tribunals or forums to promote the values that underlie an open and democratic society based on human dignity, equality and freedom when interpreting the rights in the bill.⁶¹ The importance of equality in the Constitution and the role of the right to equality in our emerging democracy must both be understood in analysing whether or not the violation of a right has indeed occurred.⁶²

In *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs*,⁶³ the Constitutional Court recognised the profound difficulties associated with implementing measures aimed at achieving equality. The Court asserted that:

“The commitment to achieving equality and remedying the consequences of past discrimination is immediately apparent in section 9(2) of the Constitution. That provision makes it clear that under our Constitution ‘equality includes the full and equal enjoyment of all rights and freedoms’. More importantly for present purposes, it permits legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination. These measures may be taken to promote the achievement of equality. But transformation is a process. There are profound difficulties that will be confronted in giving effect to the constitutional commitment of achieving equality. We must not underestimate them. The measures that bring about transformation

⁵⁸ Kabaseke “Equality or pipe dreams: gender and inclusive development under the African union’s agenda 2063” 2018 *Journal of Comparative Law in Africa* 73 77.

⁵⁹ s 1 of the Constitution of the republic of South Africa, 1996 reads as follows:

“The Republic of South Africa is one, sovereign, democratic state founded on the following values:

(a) Human dignity, the achievement of equality and the advancement of human rights and freedoms.

(b) Non-racialism and non-sexism.

(c) Supremacy of the constitution and the rule of law.

(d) Universal adult suffrage, a national common voter’s roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness.”

⁶⁰ s 9.

⁶¹ s 39(1)(a).

⁶² Gaibie “Affirmative action — concepts and controversies” 2014 *Industrial Law Journal* 2655 2655.

⁶³ 2004 4 SA 490 (CC).

will inevitably affect some members of the society adversely, particularly those coming from the previously disadvantaged communities. It may well be that other considerations may have to yield in favour of achieving the goal we fashioned for ourselves in the Constitution. What is required, though, is that the process of transformation must be carried out in accordance with the Constitution.”⁶⁴

The values that are paramount to the Constitution include: equality, freedom and human dignity.⁶⁵ These values are so structured based on their synchronization. In a nutshell each value cannot exist without the other. For example, there is no freedom without equality, no equality without the incorporation of human dignity and no human dignity without freedom. The final step in realising equality is being able to differentiate between substantive equality and formal equality.

Formal equality flows from the assumption that all individuals irrespective of previous or current shortcomings ranging from historical, social or even economical bias are equal bearers of rights.⁶⁶ In essence, formal equality aims to remove the ‘inequalities’ regardless of circumstance. Substantive equality on the other hand refrains from the presupposition of the equality of people in a neutral sense.⁶⁷ The social factors past or current that are overlooked by formal equality form the basis for the consideration of substantive equality.⁶⁸ Therefore, the above example in *Bato Star* has a substantive element of equality.⁶⁹ With the distinction drawn it is now much more convenient in understanding why AA is categorised as a substantive form of equality.

Section 6 of the Employment Equity Act (EEA),⁷⁰ reads as follows:

- “(1) No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practise, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or any other arbitrary ground.
- (2) It is not unfair discrimination to-
 - (a) take AA measures consistent with the purpose of this Act;”

⁶⁴ *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs* 2004 4 SA 490 (CC) paras 75-76.

⁶⁵ s 9, 10 and 12.

⁶⁶ Currie and de Waal *The Bill of Rights Handbook* (2005) 223.

⁶⁷ Currie and de Waal *The Bill of Rights Handbook* (2013) 213.

⁶⁸ Currie and de Waal (n 67) 213.

⁶⁹ *President of the Republic of SA v Hugo* 1997 4 SA 1 (CC) 41, it seems that the Constitutional Court has adopted a purposive approach towards interpreting substantive equality. In *Hugo* the court stated as follows:

“The prohibition on unfair discrimination in the interim Constitution seeks not only to avoid discrimination against people who are members of disadvantaged groups. It seeks more than that. At the heart of the prohibition on unfair discrimination lies recognition that the purpose of our constitutional and democratic order is the establishment of a society in which all human beings will be accorded equal dignity and respect regardless of their memberships of particular groups.”

⁷⁰ Act 55 of 1998.

Section 1 of the EEA, does not define what AA is or the measures attached thereto. There are conflicting views about what the basis of AA should be. Firstly, the rationale underlying AA was articulated by the Canadian Supreme Court in the case of *Action Travail des Femmes v Canadian National Railway Company*⁷¹, where the court stated that:

“An employment equity program is designed to break a continuing cycle of systematic discrimination. The goal is not to compensate past victims or even to provide new opportunities for specific individuals who have been unfairly refused jobs or promotions in the past, although some such individuals may be beneficiaries of an employment equity scheme. Rather, an employment equity scheme is an attempt to ensure that future applicants and workers from the affected group will not face the same insidious barriers that blocked their forbearers.”⁷²

Secondly, in response to the above rationale the court in *Van Heeden*,⁷³ echoed the following:

“What is clear is that our Constitution and in particular S 9 thereof, read as a whole, embraces for good reason a substantive conception of equality inclusive of measures to redress existing equality and such measures are not in themselves a deviation from, or invasive of, the right to equality guaranteed by the Constitution. They are not reverse discrimination or positive as argued as argued by the complainant in this case. They are integral to the reach of our equality protection. In other words, the provisions s 9(1) and s 9(2) are complementary; both contribute to the constitutional goal of achieving to ensure full and equal and enjoyment of all rights.”⁷⁴

‘Rushed justice’ is a term coined by the writer in attempt to explain the first rationale. Rushed justice is when past injustices are overlooked primarily because the adjudicating party or interested party sees fit to overlook these injustices based on a lack of immediate relevance or relief. In truth no one is bothered by problems that are not their own. For example, if one were never affected by slavery or lives in a country which does not experience natural hazards or simply own a private motor vehicle and thus not having to cope with public transport, such a person could be concerned, but not affected by the problem. ‘Rushed justice’ outlines the intention in *Action Travail* above.⁷⁵ How can we employ equity programmes with the vision of breaking down systematic discrimination without first scrutinizing the past? The reason why policies like AA exist is because of past injustices. Women remain the victims of past injustices and as result these past shortcoming influence their present.⁷⁶

⁷¹ 1987 1 SCR 1114.

⁷² *Action Travail des Femmes v Canadian National Railway Company* 1987 SCR 1114 par 1143.

⁷³ *Minister of Finance v Van Heerden* 2004 6 SA 121 (CC).

⁷⁴ *Gaibie* (n 62) 2666, S 15(2) of the Canadian Charter of rights and freedoms has a similar provision and refers to affirmative action measures as those which are aimed at prioritising the conditions of disadvantaged groups or individuals. S 15(2) states:

“Subsection (1) does not preclude any law, program or activity that has as its object the ameliorating conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour religion, sex, age, or mental capacity or physical disability.”

⁷⁵ *Action Travail* (n 72) 1143.

⁷⁶ Theron “Decent work and the crisis of labour law in South Africa” 2014 *Industrial Law Journal* 1829 1832.

The rationale outlined in *Van Heerden* is similar to that of *Action Travail* however, the objective differs. In *Van Heerden*, Moseneke J not only adopted a substantive concept of equality, he argued that the measures construed by equity programmes to do not constitute an exception to the principle of equality but are essential for its achievement.⁷⁷ In *Van Heerden*, the following measures were outlined in attempt to unpack the purpose of AA. In the first instance, the measure must select a class of people disadvantaged by past inequalities.⁷⁸ Despite this notion being vague and open ended it goes without say that race, gender and other social differentiations will be the forerunners considered here.⁷⁹ The second measure centres its aim at the advancement or protection of these individuals.⁸⁰ Finally, the measure must promote equality.⁸¹

The fourth industrial revolution will undoubtedly create further gaps primarily between men and women in the working sphere on top of those already existent. It is crucial that policies like AA measures be correctly implemented before a shift into the new industrial age becomes a reality. However, we are currently still battling with the implementation of AA measures because inequalities in the working sphere remain inherent and one such inequality is the lack of equal pay.

3.2 Unequal pay for women

“It is well recognised that women are generally paid at lower rates than their male counterparts and for over 50 years countries around the world have grappled with the issue of equality of pay between sexes.⁸² In SA, not only is there disparity of pay between men and women, but also between the different race groups.”⁸³

Historically, the principle carried by the “equal pay for equal work” and “equal pay for equal value” maxims has its foundations rooted deep in the discrepancies between men and women alike.⁸⁴ In statistics compiled by the HayGroup, results broadcast the fact that in SA, women generally earn significantly less in comparison to their male counterparts.⁸⁵ From a racial stance, Africans are lead by their White, Coloured and Indian counterparts.⁸⁶

⁷⁷ Gaibie (n 62) 2666.

⁷⁸ *Van Heerden* (n 73) par 27.

⁷⁹ *Van Heerden* (n 73) par 27.

⁸⁰ *Van Heerden* (n 73) par 41.

⁸¹ *Van Heerden* (n 73) par 41.

⁸² Grogan *Workplace Law* (2014) 130.

⁸³ Laubscher (n 2) 804.

⁸⁴ Laubscher(n 2) 806.

⁸⁵ Laubscher (n 2) 806.

⁸⁶ Laubscher (n 2) 806.

Section 3(d) of the EEA makes it compulsory for the interpretation of the Act to be consistent with international law frameworks.⁸⁷ This provision mirrors section 39(1) of the Constitution which instructs any court, tribunal or forum to consider international policy when interpreting the rights contained in the bill. The earliest expression of the right to equal pay was entrenched in Article 23(2) of the Universal Declaration of Human Rights,⁸⁸ which expresses the notion that “everyone, without any discrimination, has the right to equal pay for equal work.”⁸⁹ Soon afterwards, the International Labour Organisation convention 100 on equal pay for equal work was adopted. Article 2(1) hereto requires states to “ensure the application to all workers of the principle of equal remuneration for men and women workers for equal value.”⁹⁰ Furthermore, the International Covenant on Economic, Social and Cultural Rights guarantees the right to “fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.”⁹¹

However, it is not classified as an unfair labour practise to pay different salaries for equal work or even work for equal value.⁹² It is however, an unfair labour practise to pay different wages for equal work or work of equal value should the reasoning thereof be based on any one of the listed grounds or arbitrary grounds as a result of direct or indirect discrimination.⁹³ The questions that arises from this notion is when will it in essence be classified as equal or same work and what criteria is applied in this regard? The following factors are considered when equating a colleagues’ work as similar to your own:⁹⁴

- The responsibility demanded when evaluating the work taking into account responsibilities, finances and material;

⁸⁷ s 3 of the EEA reads as follows:

“This Act must be interpreted:

(a) in compliance with the Constitution;

(b) so as to give effect to its purpose;

(c) taking into account any relevant code of good practise issued in terms of this Act or any other employment law; and

(d) in compliance with the international law of obligations of the Republic, in particular those contained in the International Labour Organisation Convention (111) concerning Discrimination in Respect of Employment and Occupation.”

⁸⁸ of 1948.

⁸⁹ art 23 of the Universal Declaration of Human Rights 1948 reads as follows: “

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary by other means of social protection.”

⁹⁰ ILO Equal Remuneration convention 100, 1951; see also art 1 (purpose of the convention).

⁹¹ art 7(1)(i).

⁹² *Louw v Golden Arrow Bus Services (Pty) Ltd* 2000 21 ILJ 188 (LC) par 23.

⁹³ *Louw* (n 92) par 23.

⁹⁴ Laubscher (n 2) 817.

- The skills along with the qualifications, including educational history and overall experience in relation to the job be it formal or otherwise;
- The physical and emotional attributes required for the fulfilment of the position; and
- Provided it is necessary in the circumstance, the conditions under which the work is performed.

The list of factors is not a closed one when considering the elements attached to equal work or work of the same value.⁹⁵ It is up to the employer in determining whether the outside factor in the given circumstance is relevant for assessing the value of the work.⁹⁶

Regulation 4 of the Employment Equity Regulations provides the meaning of work of equal value. Regulation 4 reads as follows:

“For the purpose of these regulations, the work performed by an employee-

- (1) is the same as the work of another employee of the same employer, if their work is identical or interchangeable;
- (2) is substantially the same as the work of another employee employed by that employer, if the work performed by the employees is substantially similar that they can reasonably be performing the same job, even if their work is not identical or interchangeable;
- (3) is of the same value as the work of another employee of the same employer in a different job, if their respective occupations are accorded the same value in accordance with regulations 5-7.”⁹⁷

The fundamental premise in acknowledging the core concept of equal work is basically like any other, it provides the understanding party with sufficient knowledge on how to apply the principle or understanding in relevant circumstances. Mere entitlement without the knowledge of the concept provides the opposing party with the idea that you have no standing point in your logical reasoning and as a result, one will not be taken seriously. For example, in *Ntai v SA Breweries Ltd*,⁹⁸ three African employees found themselves on the receiving end when they alleged that two of their white colleagues earned significantly more than they did primarily on the notion of race.⁹⁹ The group were all training officers at the alleged employer’s training institute.¹⁰⁰ The employer vehemently denied that the differentiation was based on race and expressed the fact that other factors as opposed to race justified the differentiation.¹⁰¹ Thus, the court accordingly dismissed the applicant’s claim.¹⁰²

⁹⁵ Laubscher (n 2) 817.

⁹⁶ Laubscher (n 2) 817.

⁹⁷ Reg 4.

⁹⁸ 2001 22 ILJ 214 (LC).

⁹⁹ *Ntai v SA Breweries Ltd* 2001 22 ILJ 214 (LC) par 7.

¹⁰⁰ *Ntai* (n 99) par 1-5.

¹⁰¹ *Ntai* (n 99) par 7.

The concept of equal work or work for equal value is broadly defined as aforementioned and is further protected hereunder as expressed in the EEA.

Section 6(4) of the EEA,¹⁰³ provides the following regarding equal work or work of equal value:

- (4) “A difference in terms and conditions of employment between employees of the same employer performing the same or substantially the same work or work of equal value that is directly or indirectly based on any one or more of the grounds listed in subsection (1), is unfair discrimination.”¹⁰⁴

For a court to validate the work performed by a colleague thus rendering it work of equal value, the applicant needs to create a sufficient factual foundation so that the forum from which the claim arises can be dealt with accordingly.¹⁰⁵ Regulation 7 of the Employment Equity Regulations provides a list of factors which justify differentiation regarding equal pay:

- (1) “If employees perform work that is of equal value, a difference in terms and conditions of employment, including remuneration, is not unfair discrimination if the difference is fair and rational and is based on any one or a combination of the following grounds:
- (a) the individuals’ respective seniority or length of service;
 - (b) the individuals’ qualifications, ability, competence or potential above the minimum acceptable levels required for the performance of the job;
 - (c) the individuals’ respective performance, quantity or quality of work, provided that employees are equally subject to the employer’s performance evaluation system is consistently applied;
 - (d) where an employee is demoted as a result of organisational restructuring or for any other legitimate reason without a reduction in pay and fixing the employee’s salary at this level until the remuneration of employees in the same job category reaches this level;

¹⁰² *Ntai* (n 99) par 7.

¹⁰³ s 6(4) of the EEA.

¹⁰⁴ s 6(4) of the EEA.

¹⁰⁵ *Mangena v Fila SA (Pty) Ltd* 2010 31 ILJ 662 (LC) par 15.

- (e) where an individual is employed temporarily in a position for purposes of gaining experience or training and as a result receives different remuneration or enjoys different terms and conditions of employment;
 - (f) the existence of a shortage of relative skill, or the market value in a particular job classification; and
 - (g) any other relevant factor that is not unfairly discriminatory in terms of section 6(1) of the Act.
- (2) A differentiation in terms and conditions of employment based on one or more grounds listed in sub regulation (1) will be fair and rational if it is established, in accordance with section 11 of the Act, that-
- (a) Its application is not biased against an employee or group of employees based on race, gender or disability or any other grounds listed in section 6(1) of the Act; and
 - (b) It is applied in a proportionate manner”¹⁰⁶

In light of the above, it must be borne in mind that objective determination is key when considering whether or not a job is of equal value, if not, then no finding of unfair discrimination will be unpacked as far as the section 6(4) inquiry is concerned.¹⁰⁷ However, provided that a complainant is prosperous with a claim involving unfair discrimination, the Labour Court, in its capacity will rule accordingly.¹⁰⁸ For instance, this will entail payment of damages, compensation, an order instructing the employer to adopt policy which prohibits the repetition of the prejudicial consequences of unfair discrimination in the future and finally, the publication of the said order.¹⁰⁹ In these scenarios, the likely remedy will impose upon the employer the duty to equalise the remuneration of the complainant to that of the said

¹⁰⁶ Reg 7.

¹⁰⁷ Reg 5 asserts that:

“When section 6(4) of the Act-

(1) it must first be established:

(a) whether the work concerned is of equal value in accordance with regulation 6; and

(b) whether there is a difference in terms and conditions of employment, including remuneration .

(2) it must then be established whether any difference in terms of subregulation (1)(b) constitutes unfair discrimination, applying the provisions of section 11 of the Act.”

¹⁰⁸ Laubscher (n 2) 821.

¹⁰⁹ Laubscher (n 2) 821.

compatriot.¹¹⁰ Our courts however, have not yet charted on to the possibility of a reduction of pay in these circumstances.¹¹¹

3.3 Sexual Harassment and the new digital age

The two aforementioned sub-chapters highlight the position women are currently in the workplace. AA and equal pay for women in work remain two of some of the biggest obstacles women still need to clear particularly in the dawn of the new digital age. However, a much more serious inequality setting remains the toughest for women overall. Sexual harassment can render any workplace intolerable because unlike the abovementioned obstacles of equality women have to face, sexual harassment attacks more than just economic and social instability, it goes down to the root of a person's being and damages a person's emotional intelligence. This is broadly discussed below in this sub-chapter.

Sexual harassment is uncompromisingly restricted as a class of prejudicial sexual act carried out in the working environment.¹¹² The conditions and reasoning for this is entrenched in the EEA, Employment Equity Amendment Act and the Code of Good practise on the Handling of Sexual Harassment Cases in the Workplace of 2005 in relevant matters.¹¹³ The application of these frameworks is of paramount importance for adjudicators presiding on matters of this nature. Among other grounds, the Constitution itself prohibits unfair discrimination against any citizen based on the notions of sex, gender and sexual orientation.¹¹⁴ It must also be remembered that as core values, the Constitution promotes equality and a non-sexist stance.¹¹⁵

It is therefore apparent that sexual harassment arises as a result of a person's gender or sex in a form of unfair discrimination.¹¹⁶ Sexual harassment is not specifically defined the EEA which instead makes provision for harassment.¹¹⁷ One of the earliest and detailed definitions was provided for by an author named Mowatt. Mowatt asserts that:

“Sexual harassment occurs when a women's sex role overshadows her work role in the eyes of the male, whether it be a supervisor, co-worker, client or customer; in other words, her gender receives more attention than her work. It may take the form of innuendo, inappropriate gestures or physical touching. In its narrowest form, sexual harassment occurs when a woman is expected to engage in

¹¹⁰ See s 35 of Basic Conditions of Employment Act 75 1997 and Reg 4.7.

¹¹¹ Laubscher (n 2) 821.

¹¹² See s 6(1) of the EEA; s 3 of the Employment Equity Amendment Act 47 of 2013.

¹¹³ Act 55 of 1998 and Act 47 of 2013.

¹¹⁴ s 9.

¹¹⁵ s 1.

¹¹⁶ Le Roux, Orleyn and Rycroft *Sexual Harassment in the Workplace: Law, Policies and Processes* (2005) 6.

¹¹⁷ Harassment is defined in s 1 of the Protection against Harassment Act 17 of 2011.

sexual activity in order to obtain or keep her employment, or obtain promotion or other favourable working conditions. Inherent in this form is the element of coercion, or the abuse of power by the male. The wider view is that any unwanted sexual behaviour or comment which has a negative effect on the recipient constitutes Sexual Harassment.”¹¹⁸

The only element the writer would add onto the above definition of sexual harassment is to expand the definition to include acts of sexual harassment committed against men. Men have also been victims of sexual harassment.¹¹⁹ In the opening paragraph of this sub-chapter the writer briefly makes a note on the reason as to why this form of unfair discrimination is probably the worst.¹²⁰ Sexual harassment is prohibited primarily because of the injurious consequences it holds for the victim,¹²¹ considering the threats it poses to fundamental values such as human dignity, privacy and bodily integrity.¹²² A key aspect which may be found in the above inferences of sexual harassment is the fact that it’s “unwelcome.”¹²³ Therefore, the attention given to the victim has to be rejected expressly or otherwise. The complainant alleging that they have in fact been sexually abused cannot make this allegation if the attention they received was enjoyed, encouraged or even participated in,¹²⁴ such a setting would then be a contradiction to the nature of sexual harassment. In instances where the complainant invited a particular advancement or attention from the perpetrator, the moment the complainant revoked his or her consent any failure by the perpetrator to respect such revocation would constitute sexual harassment.

Cloete J in *Sdulla v Jules Katz* reflects on this finding.¹²⁵ According to Cloete J, in a matter of pure sexual harassment, one would not foresee any new trends or fresh material introduced by the victim especially based on their life or even private parts.¹²⁶ There are regardless, instances that justify a victim in proceeding in this manner however, these circumstances are rather exceptional. This flows from the elements of protestation and discouragement which a

¹¹⁸ See *Gregory v Russells (Pty) Ltd* 1999 20 ILJ 2145 (CCMA) 2161; *J v M* 1989 10 ILJ 755 (IC) 757.

¹¹⁹ Items 4-7 Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace item.

¹²⁰ This fact was noted by Waglay DJP in *Motsamai v Everite Building products (Pty) Ltd* 2011 2 BLLR 144 (LAC) 149, the learned Judge argues as follows:

“Sexual Harassment is the most heinous misconduct that plagues a workplace; not only is it demeaning to the victim, it undermines the dignity, integrity and self-worth of the employee harassed. The harshness of the wrong is compounded when the victim suffers it at the hands of his/her supervisor. Sexual harassment goes to the root of one’s being and must therefore be viewed from the point of view of a victim: how does he/she perceive it, and whether or not the perception is reasonable.”

¹²¹ Botes “Identifying sexual harassment in the workplace? Do not forget to remember the code of good practice” 2015 *Industrial Law Journal* 1719 1724.

¹²² s 10, 14 and 12(2).

¹²³ Botes (n 121) 1724.

¹²⁴ Botes (n 121) 1724.

¹²⁵ 1997 18 ILJ 1482 (CCMA).

¹²⁶ *Sdulla v Jules Katz* 1997 18 ILJ 1482 (CCMA) 1487.

victim should possess when finding themselves in a position of sexual prejudice.¹²⁷ As a result, an effective separation has to be made among matters where sexual harassment surfaces as sexual discrimination prohibited by the code and situations where sexual advances or attention is found amidst two consenting adults.¹²⁸ The reasoning behind this differentiation is simple, firstly, matters cannot be viewed passively in order to avoid false allegations, secondly, serious occurrences cannot be viewed objectively in order to trivialise a legitimate claim.¹²⁹

3.3.1 Sexual harassment in the new digital age.

The fourth industrial revolution is accompanied by the rise of computer usage in the workplace. This means that employers are responsible for regulating and harmonizing liability and loss of productivity issues against the employees' right to privacy in a computerised sense.¹³⁰ The need for policies regulating internet use should be of paramount importance to employers.¹³¹ The monitoring of internet use as a policy in itself does not compromise the privacy and integrity of the messages due to the fact that the contents of the message itself is not viewed rather the data usage, frequency and size of the messages are monitored.¹³² A complex question is whether or not in actual fact, an employer may indeed view the content of the message sent by an employee, without such employee's consent? The Interception and Monitoring Prohibition Act,¹³³ provides that the intentional interception of communication without consent is prohibited.¹³⁴ This draws the presumption that obtained prior consent from the employees themselves could justify this stance.

The relevance of the above paragraph is aimed at the question of how will the increases in computerisation in the labour sphere as a definite element of the new industrial age impact on sexual harassment in the workplace? Should employers fail to view the content of messages, employees will continue send and receive to one another unfiltered content and can therefore provide a new ground for sexual harassment to thrive in. Now how does one go about preventing technological innovation from increasing the gender based gap in employment

¹²⁷ *Sdulla* (n 126) 1487.

¹²⁸ *Sdulla* (n 126) 1487.

¹²⁹ See *Simmers v Campbell Scientific Africa (Pty) Ltd and others* 2014 35 ILJ 2866 (LC) par 4-8 and 42-46; *Campbell Scientific Africa (Pty) Ltd Simmers and Others* (CA14/2014) 37 ILJ 116 (LAC) 1-17 and 20-36.

¹³⁰ s 14.

¹³¹ Dancaaster "Internet abuse: A survey of South African companies 2001" *Industrial Law Journal* 862 862.

¹³² Dancaaster (n 131) 863.

¹³³ Act 127 of 1992.

¹³⁴ s 2 of the Interception and Monitoring Prohibition Act 127 of 1992.

maintained by sexual harassment? Despite the uncertainty, the employer may argue in contrast to the constitutional right to privacy enjoyed by employees in this regard. The employer can assert that they are the true owners of workplace tools like computers thus ownership is a starting point.¹³⁵ They can further argue for the wavering of privacy purely on the reasons that they intend to guard against vicarious liability involving defamation and sexual harassment as pure consequences of increased computerisation.¹³⁶ To hamper this foreseeable cascade of liability which will fuel inequalities, employers may adopt the following policies:¹³⁷

1. A restriction on withholding or sending content or communications of a discriminatory, harassing or obscene nature;
2. Prohibiting the transferring of sexually biased content on any electrical platform during or after working hours;
3. Ensuring that personal communications are not construed as the position of the employer;
4. Ensuring that content is delivered to the correct recipient, accompanied by disclaimers in business messages;
5. Prohibiting the sharing, receiving or withholding unlicensed material or the confidential information of the employer;
6. Prevention of personal gain through the use of the company's internet sources of communication;
7. Restrictions on surfing the internet for personal use during business hours.

In summary, this chapter aimed to highlight the vehicles transporting gender inequality in the workplace currently and much more importantly in the near digital future. It is pivotal to understand the concept of equality because this study aims to examine its origin, current status and future role especially in the new industrial age. Now that the inequalities have been examined along with its policy implementations such as AA through the EEA, we have to evaluate the possible solutions that can be utilized to reduce gender based gaps. In short, how does this study intend to advance equality for women in work amidst the introduction of the

¹³⁵ s 25.

¹³⁶ Burchell *The Law of Defamation* (1985) 35.

¹³⁷ *Dancaster* (n 131) 864.

new digital age? Chapter three is the bridge between equality for women in the workplace and the potential they have to thrive in the technologically driven future.



CHAPTER 4: SKILLS DEVELOPMENT: PREPARING FOR AND THRIVING IN THE NEW INNOVATIVE AGE

4.1 *Employee categories: the precariat worker*

In his research, Guy Standing has identified a new class of labourers called the “precariat” worker which has emerged as a result of globalization, liberalization and an increase in robotisation and digitisation.¹³⁸ For a better understanding the precariat class has been divided into four introductory groups namely: the underemployed, underpaid, knowledge entrepreneurs and finally vagabond workers.¹³⁹

4.1.1 Underemployed

“Underemployed” individuals possess a good education and vast work experience however, they are in a competitive sphere which is further threatened by robotisation and as a result succumb to minimal paying jobs.¹⁴⁰ In most instances the underemployed receive short-term contracts based on the relevant companies’ needs and take on extra jobs in hope of securing a permanent one.¹⁴¹ They receive no recognition for the extra work and when a permanent post becomes available there are hundreds of other competitors who have applied for the same job with extra work experience like the underemployed candidate supporting their applications as well.¹⁴²

4.1.2 Underpaid

The second type of person boasts a higher education than the underemployed candidate usually in the form of a university qualification, however they lack the necessary experience to break through into their relevant profession.¹⁴³ These individuals have been instilled with the notion that education yields success however, after graduating, are incapable of securing

¹³⁸ Johannessen *The Workplace of the Future-the Fourth Industrial Revolution, the Precariat and the Death of Hierarchies* (2019) 14.

¹³⁹ Johannsen (n 138) 14.

¹⁴⁰ Johannsen (n 138) 14.

¹⁴¹ s 198B of the LRA provides:

“(1) For the purpose of this section, a “fixed term contract” means a contract of employment that terminates on-

(a) the occurrence of a specified event;

(b) the completion of a specialised task or project; or

(c) a fixed date, other than an employee’s normal or agreed retirement age.”

¹⁴² Johannessen (n 138) 14.

¹⁴³ s 6 of the Employment Services Act 4 of 2014: promotes the employment of youth and vulnerable work seekers.

regular well paying jobs.¹⁴⁴ These individuals experience anger and frustration based on the idea that once they had graduated they would be greeted with a well paying job, but rather the contrary is experienced.¹⁴⁵ A good example to this class can be law students who are constantly reassured during their studies of the status and prestige a law degree promises, but in actual fact encounter low remunerated internships with high demands. This is the “underpaid” class.

4.1.3 Knowledge entrepreneurs

The third category of people are those with specialized expertise such as PhDs or masters qualifications.¹⁴⁶ “Knowledge entrepreneurs” as they have come to be known had well-paying jobs before rendered obsolete by informatisation, robotisation, digitisation and automation.¹⁴⁷ These people go on to start their own business and usually outsource their expertise to larger enterprises.¹⁴⁸ Despite being satisfied with their entrepreneurial exploits they are troubled by income insecurities due to the fact that they are also employed on a short term basis and know that they could be earning more just like their counterparts in the same enterprises that they are currently imparting their expertise in.¹⁴⁹

4.1.4 Vagabond

The final category of persons is the “vagabond worker”.¹⁵⁰ They may be migrants or even be people with disabilities with skills and good education but differ from the working poor.¹⁵¹ On a whole, the vagabond workers are more than content with their source of employment even if it is part-time solely on the premise that it is better than their previous standing; for instance a qualified doctor from Ethiopia working in SA in retail or a nurse from Syria

¹⁴⁴ Johannessen (138) 14.

¹⁴⁵ Johannessen (138) 14.

¹⁴⁶ Johannessen (138) 14.

¹⁴⁷ *The Oxford Dictionary of English* <http://www.mobisystems.com> (2019-09-26) defines “Automation” as “the use or introduction of automatic equipment in manufacturing or other process or facility, Digitisation is the conversion of text, pictures or sound into a digital form that can be processed by a computer, Robotisation is the conversion to operation by robots, Informatisation refers to the extent by which a geographical area, an economy or society is becoming information-based.”

¹⁴⁸ According to Benjamin “Decent work and non-standard employees: options for legislative reform in South Africa: A discussion document” 2010 *Industrial Law Journal* 845 846, many employers use non-standard forms of work (such as outsourcing and temporary employment services) to bypass labour regulations.

¹⁴⁹ Johannessen (n 138) 14.

¹⁵⁰ Johannessen (n 138) 15.

¹⁵¹ Johannessen (n 138) 15.

working as a waitress in England.¹⁵² In this light, the quality attached to their part-time employment is valued above the circumstances they once endured.

The golden thread among the four categories of workers is the fact that both their current occupations and source of income is temporary creating insecurities regarding their economic standing. The precariat worker also has a sense of pride entrenched in them and shy away from joining the working poor. These individuals are not an ideology rather; they are existing individuals in society who possess hope and aspirations without opportunity. It seems like the fourth industrial revolution will create many unhappy youth and labourers. Most people with the relevant qualifications will be vying for that well paying job only to be broken upon experiencing rejection on application. The questions thus become, what improvements can we make to the already employed personnel in order to prepare them for technological challenges? For the university scholars, what can be incorporated in the current curriculum to provide them with skills needed in the new digital age? All of this bearing in mind the gender-based gap women encounter in work.

4.2 Skills development among the already employed

Policies like AA provide women with the well needed opportunities to obtain well deserved recognition primarily in qualification based positions.¹⁵³ As noble as that may be, women already face challenges before even obtaining qualifications.¹⁵⁴ These include domestic duties, patriarchy and inequalities in employment. Therefore, AA provides qualified women with a foot in the door but who then provides the women with no qualifications or those already employed with minimal qualifications with an equality seeking resolution like AA?

With the work environment gradually improving as a result of the fourth industrial revolution, a portion of the already existent jobs will be developed in the same breath a portion of select jobs will be rendered redundant.¹⁵⁵ It is crucial for corporations to retain the already existing employees when it is commercially feasible and more especially the women as we do not want to extend the gender gap in employment.¹⁵⁶ Obviously, at first there will be a shortage of skills with a lack of the necessary knowledge to thrive in the new industrial age.¹⁵⁷ It will be in the best interests of the establishments to train and develop an already

¹⁵² s 8 of the Employment Services Act, reaffirms the position of employing foreign nationals.

¹⁵³ See s 6 of the EEA.

¹⁵⁴ Kabaseke (n 58) 80.

¹⁵⁵ See Schwab (n 38) 36.

¹⁵⁶ Kumar, Zindani and Davim *Industry 4.0 Developments towards the Fourth Industrial Revolution* (2019) 32.

¹⁵⁷ Kumar, Zindani and Davim (n 156) 32.

existent female workforce. Where a newer generation of workers is required to occupy newer roles then AA measures should automatically be incorporated.¹⁵⁸ The reality is that, even if a female work force is promoted, then obstacles like sexual harassment, unequal pay and a lack of sufficient representation in STEM fields hamper female progress.¹⁵⁹

It will therefore, be a task well suited for the human resource department in corporations to fixate their attention toward the development of a suitably qualified workforce with a focus on female candidates. Human resources will therefore, be responsible for training and developing personnel for new roles from time to time. The new digital age will require that the skills currently possessed by the working class to advance significantly.¹⁶⁰ However, a crucial goal that companies should consider before the transition is where they are currently as an enterprise and at what rate can they adapt to the relevant change.

In this study, the writer suggests that a policy identical to AA but applied in reverse in attempt to answer the posing questions in this chapter. These include, how can AA measures advance the interests of those women in work with no qualifications as a result of prejudices transpiring before the implementation of AA measures?¹⁶¹ The policy in contention would aim to retain women skills and contributions above all other demographic groups in the new age of innovation or even potentially on the eve of retrenchments. The framework will aspire not only to develop already existent female labourers but, also prioritise their involvement in the acquiring and introducing of new skills through training. The policy would have to be approved by a majority vote of the relevant representative female bodies at work. It is a policy that must be applicable in the immediate future as a tool to adapt to the fourth industrial revolution. Like any national framework, the policy in question would have to be revised, taught and understood by all in house members of the relevant organisation.

4.3 *The influence of higher education*

Higher education has an integral role to play in moulding the intellectual developments of the youth necessary to adjust to the realities promised by the fourth industrial revolution.¹⁶² Tertiary education was purposively designed to mould scholars consistently with the prerequisites required by the previous era of invention *i.e* mass production through

¹⁵⁸ Kumar, Zindani and Davim (n 156) 32.

¹⁵⁹ See Effoduh (n 7) 79; Bhardwaj and Imafidon (n 27).

¹⁶⁰ Kumar, Zindani and Davim (n 156) 28.

¹⁶¹ See *Van Heerden* (n 73) par 27 and 41 .

¹⁶² Grossman "The New Industrial Revolution: Meeting the Challenge." 1985 *Public Law Forum* 419 421.

electrical methods.¹⁶³ Students today face a cascade of social strains ranging from social inequalities to climate change. Career choices will be driven by artificial intelligence rendering former choices of tuition redundant.¹⁶⁴ The role played by tertiary institutions will have to take a mass exodus from theoretical academic influence to one that prepares graduates for a more practically focused society with recurring adaptive tools built for synchronization with the new digital age.¹⁶⁵

A vital tip for higher education during the new digital age is that learning needs to advance beyond the limits of the current programs offered in the universities.¹⁶⁶ Whatever was promised before by completing a degree is no longer guaranteed. Basically what is obtained in tertiary will no longer be sufficient in the digital age and continuous lifelong learning alongside up skilling is rather much more pivotal.¹⁶⁷ It is the skills that will carry one through, the content will always be changing. Personally, the writer supports the notion of lifelong learning and up skilling.¹⁶⁸ The current curriculum tests memory above all else. Creativity and practicality are tools only obtained over time in practise. This suggests that the kids who study for longer and cram better are viewed in society as the top achievers whereas someone more creative and practically minded, who would probably score lower in an examination and overall percentage, would be viewed as not being academically inclined.

The emphasis of a need for skills development in this chapter is applied two-fold. Firstly, to those already in employment and secondly, to those currently obtaining qualifications in universities.¹⁶⁹ The fourth industrial revolution is an era which will highly demand an advanced skill set.¹⁷⁰ The challenge lies in incorporating these skills in a system which already has a routine pattern of development. As mentioned above, the methods used in today's development strategies are ideal for the previous industrial ages.¹⁷¹ Already at the commencement of this chapter we learnt of a new category of individuals with different expertise which already exist as a result of the technological innovations. The reality is that in a developing country moreover in a developing continent, the introduction of new technological platforms would not be beneficial due to the innovative gap between developed

¹⁶³ Gleason (n 1) 5.

¹⁶⁴ Gleason (n 1) 5.

¹⁶⁵ Grossman (n 162) 421.

¹⁶⁶ Gleason (n 1) 7.

¹⁶⁷ Gleason (n 1) 7.

¹⁶⁸ Gleason (n 1) 7.

¹⁶⁹ Grossman (n 162) 421.

¹⁷⁰ Gleason (n 1) 5.

¹⁷¹ Gleason (n 1) 7.

and developing countries. The skills will overbear the rate at which technological advancement is adapted in Africa. In truth, does this in turn mean that we are developing a skill set in our people who will eventually be exported to developed countries to use these attributes thus maintaining the *status quo* on the continent?



CHAPTER 5: THE FUTURE OF WOMEN IN AFRICA AND THE POLICIES IN LINE TO ADVANCE EQUALITY OF WOMEN IN WORK

“However, I also felt a sense of despair and pessimism as I become aware of the gap that the fourth industrial revolution further creates between the "West" and the "Rest". This gap is not only a technological one but touches on almost every area of human development and agency. For example, in the West, genetic sequencing is now unbelievably cheap, and humans and machines are augmenting and assisting each other with knowledge and skills. Meanwhile, there are four billion people in the 'Third World' who tend to lack reliable internet access. For Africa, the second industrial revolution is yet to be fully experienced as nearly 1.3 billion people lack access to electricity. The problem rests not with the "failure" of the "Third World" to "catch up" to the fourth industrial revolution, but it is how the fourth industrial revolution raises concerns around issues of power asymmetry, security, and the resulting threats of inequality, disempowerment, and exploitation.”¹⁷²

5.1 *The fourth industrial revolutions' influence on women in Africa*

One of the emerging debates centred on the realities posed by the fourth industrial revolution include Africa's role within the evolving technological innovations while minimal coverage broadcasts how African women fit into this era of change.¹⁷³ As mentioned above in chapter two of this study, automation in productive fields among other advancements is placing women's employment at risk, as their efforts are mainly based in low-skilled routine professions. The other adverse effect the fourth industrial revolution will have on Africa is the broadening of gender inequalities. The reasoning behind this finding is mainly based on the fact that most of our female counterparts lack the necessary skills to thrive in the emerging knowledge economy.¹⁷⁴ It goes without saying, that the promotion of female entrepreneurship and the participation of women in STEM professions must be mandatory.

5.2 *Policies advancing women equality.*

5.2.1 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

CEDAW is a landmark treaty in the struggle for women's rights as it represents a departure from the fragmentary approach of earlier instruments protecting women's rights.¹⁷⁵ CEDAW entered into force on 3 September 1981, upon ratification by the required 20 member states.¹⁷⁶ As of June 2013, CEDAW has been affirmed by 187 state parties, making it the

¹⁷² Effoduh (n 7) 78.

¹⁷³ Chiweshe "Fourth industrial revolution: what's in it for women in Africa"

<https://www.africaportal.org/publications/fourth-industrial-revolution-whats-it-african-women> (2019-09-11).

¹⁷⁴ Chiweshe (n 173).

¹⁷⁵ Faturoti "Women's rights in Africa: an examination of African human rights systems in the context of cedaw and the universalism versus cultural relativism debate" 2016 *Journal of Comparative Law in Africa* 149 157.

¹⁷⁶ Faturoti (n 175) 157.

second most widely ratified human rights treaty.¹⁷⁷ CEDAW permits states to engage temporal measures such as affirmative policies in instances where gender inequality still persists, an indicator that the CEDAW goes beyond the common understanding of equality and focuses on equality of opportunity and outcome.¹⁷⁸ It further guarantees women's right to education, employment, access to credit and loans, access to housing and the right to participation, equal treatment in land and agrarian reform, as well as in land resettlement schemes.¹⁷⁹

5.2.2 SADC Protocol on Gender and Development

The SADC Protocol on Gender and Development is a treaty which mirrors the goal of this study. The objectives of the instrument are:¹⁸⁰

- a. "to provide for the empowerment of women, to eliminate discrimination and to achieve gender equality and equity through the development and implementation of gender responsive legislation, policies, programmes and projects
- b. to address emerging gender issues and concerns
- c. to set realistic, measurable targets, time frames and indicators for achieving gender and equity."

Among other key policy implementations the protocol prioritises: the introduction of policies by member states ensuring the sustainable development of youth,¹⁸¹ equality in gender education with a specific focus on the introduction of special measures increasing the participation of girls in STEM fields on all levels of education,¹⁸² and the economic empowering of women.¹⁸³ The protocol further aims to eradicate patriarchy through the conducting of time use studies and policy adoption to promote shared responsibility between men and women within family life to ease the burden on women.¹⁸⁴

¹⁷⁷ Faturoti (n 175) 157.

¹⁷⁸ art 1.

¹⁷⁹ art 2-9.

¹⁸⁰ art 3.

¹⁸¹ art 11.

¹⁸² art 14(2).

¹⁸³ art 17.

¹⁸⁴ art 16.

As a testament to this study, particularly chapter 3, the SADC instrument recognises the eradication of gender based inequalities of work through the implementation of policies prioritising equal pay and overall working conditions between men and women.¹⁸⁵

Gender inequalities exist in three main areas namely, ownership of resources like land and income, in institutions and specifically in governance, and in socially constructed exclusion of women in their homes and societies, which hinders women's contribution to sustainable development.¹⁸⁶ Women form the majority of the people working in agriculture in sub-Saharan Africa and contribute greatly to the economic development of most African countries.¹⁸⁷ FAO (food and Agriculture organisation) has noted that if women had more access to resources like land, agricultural output would increase by about 20–30% and would save about 100–150 million people from hunger.¹⁸⁸



¹⁸⁵ art 19.

¹⁸⁶ Kabaseke (n 58)78.

¹⁸⁷ Kabaseke (n 58)78.

¹⁸⁸ Kabaseke (n 58)78.

CHAPTER 6: CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

Firstly, this study assessed the realities which the fourth industrial revolution offers not only technologically but also the extent to which this new age will have on the gender based gap in employment. Secondly this paper evaluated the current and potential future policies which provide for equality, primarily for women in the workplace. Thirdly, this study expounded on the seriousness of skills development as a thriving tool for survival in the fourth industrial revolution and towards achieving gender based equality in employment. In the process, the writer uncovered a new class of labourer referred to as the “precariat” worker which surfaced as a consequence of the forecasted fourth industrial revolution. Furthermore, the movement centred on the achievement of equality and sustainable development for women as a continent was visited. This study acknowledged the benefit attached to the new age of invention from a female’s perspective. This paper further coined together solutions which could be utilized in the near future in attempt to aid the empirical realities our women could face in the dawn of the new digital age through a policy suggestion for women in work.

In essence, the forth industrial revolution will impact on societies differently based on the development pace adopted thereby. It will be less complex for developed countries to adjust to this systematic change due to the fact that they have adequate infrastructure and fiscal resources. AA as a bridge shortening the gap for gender based differentiation is a policy which still has quite some distance to go. Patriarchy alongside a reduced opportunity for skills development hampers the progress of any women orientated equality policy mentioned above. The principles advancing equality in work for women are implemented however, at a slow rate. In truth, the fourth industrial revolution in itself is merely an age for innovation subject to a forever evolving society and not an enemy for women. The gender based stereotypes and the technology promised by the new digital age are both human driven. Meaning people or men to be exact are the only drivers of the bias women in work experience globally. In SA, many homes are stabilised by single women dependant on jobs which are threatened by this new era of digitisation. These include tills at retail stores, grocery stores and computer administrative jobs. As a consequence, this new age of invention will negatively impact our female compatriots particularly the less skilled. In a country where inequality and unemployment are the forerunners of adversity in society, not much positivity can be foreseen from the new age of invention.

In actual fact, most policies work on paper and are lacking in the execution thereof. Numerous frameworks like CEDAW or the EEA will continue to be promulgated only to be met with reluctance from the well off members of society. This entails that housewives in more affluent homes would not need policy to act on their behalf thus hampering development for women at ground level. Even those who find employment, do it on a temporal scale so as to maintain household duties. As a result, women empowerment will be delayed because women are not afforded the opportunities to consider and further pursue their career paths. Therefore, maintaining the *status quo*. As a developing country, with many socially fuelled challenges, automation or digitisation will not be a solution to the minimisation of gender inequalities in work. The fourth industrial revolution on its own is a relatively new ideology primarily in Africa meaning that there is a lot left to be desired especially when asking whether or not it will provide the solutions our women need and deserve.

6.2 Recommendations

Recommendation 1.

Increasing the number of girls in STEM fields is necessary in light of the new digital age. A page can be taken from schooling models like the “Oprah Winfrey Leadership academy for girls”. The creation of schools such as this one which prioritises the sustainable development of girls should adopt a curriculum strongly rooted in STEM. This will entail that the inherent requirement of a girls only institution which is solely focused on STEM fields. Therefore, the girls that enrol there will be groomed from a young age on the complexities and advantages of a STEM fraternity endorsed by women. In achieving this recommendation, strong female pioneers like the first lady of the country and ministers of higher and basic education should join forces. The eventual result will cater for a stronger presence for women nationally in STEM industries. The success of this initiative will warrant a representative of SA to further propose this incentive to the SADC regions. This would prove to be a major leap toward nullifying gender inequalities in work and society and securing women roles in the fourth industrial revolution.

Recommendation 2.

In a political sense, a new quota partitioning for an increase in female leaders in parliament should be introduced. Despite the speaker of parliament being a woman, political parties should ensure that one of the two most important offices in their party is filled by a woman.

The offices in question are the office of president and deputy president. This system will ensure that in every political organisation in the country, a woman occupies a seat in the executive of that said party. This would be more prominent in organisations like the African National Congress, meaning that the current deputy president or president of the country would be a woman. This incentive would motivate countless women and girls nationally to pursue leadership roles thus ushering a new era where the promulgation of policies would automatically cater for female development.



BIBLIOGRAPHY

LEGISLATION

Basic Conditions of Employment Act 75 of 1997

Code of Good practise on the Handling of Sexual Harassment Cases in the Workplace, 2005

The Constitution of the Republic of South Africa, 1996

General Administrative Regulations of the Basic Conditions of Employment Act, 2002

Occupational Health and Safety Act 85 of 1993

Employment Equity Act 55 of 1998

Employment Equity Amendment Act 47 of 2013

Employment Equity Regulations, 2014

Employment Services Act 4 of 2014

Labour Relations Act 66 of 1995

Protection against Harassment Act 17 of 2011

CASE LAW

Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs & others
2004 4 SA 490 (CC)

Campbell Scientific Africa (Pty) Ltd v Simmers 2016 37 ILJ 116 (LAC)

Gregory v Russells (Pty) Ltd 1999 20 ILJ 2145 (CCMA)

J v M 1989 10 ILJ 755 (IC)

Louw v Golden Arrow Bus Services (Pty) Ltd 2000 21 ILJ 188 (LC)

Mangena v Fila SA (Pty) Ltd 2010 31 ILJ 662 (LC)

Motsamai v Everite Building products (Pty) Ltd 2011 2 BLLR 144 (LAC)

Ntai v SA Breweries Ltd 2001 22 ILJ 214 (LC)

President of the Republic of SA v Hugo 1997 4 SA 1 (CC)

Sadulla v Jules Katz 1997 18 ILJ 1482 (CCMA)

Simmers v Campbell Scientific Africa (Pty) Ltd 2014 35 ILJ 2866 (LC)

Uber SA Technology Services (Pty) Ltd v National Union of Public Services & Allied Workers 2017 ZACCMA 1 (CCMA)

Uber SA Technology Services (Pty) Ltd v National Union of Public Services & Allied Workers 2018 39 ILJ (LC)

FOREIGN CASE LAW

Travail des Femmes v Canadian National Railway Company 1987 SCR 1114

JOURNAL ARTICLES

Benjamin “Decent work and non-standard Employees: options for legislative reform in South Africa: A discussion document” 2010 *Industrial Law Journal* 845

Botes “Identifying sexual harassment in the workplace? Do not forget to remember the code of good practice” 2015 *Industrial Law Journal* 1719

Dancaster “Internet abuse: A survey of South African companies” 2001 *Industrial Law Journal* 862

Effoduh "The fourth industrial revolution" 2016 *Transnational Human Rights Review* 76

Faturoti “Women’s rights in Africa: an examination of African human rights systems in the context of cedaw and the universalism versus cultural relativism debate” 2016 *Journal of Comparative Law in Africa* 149

Fourie “Non standard workers: the south African context, international law and regulations by the European union” 2008 *Potchefstroom Electronic Law Journal* 110

Gaibie “Affirmative action — concepts and controversies” 2014 *Industrial Law Journal* 2655

Grossman "The New Industrial Revolution: Meeting the Challenge." 1985 *Public Law Forum* 419

Hutchinson "Legal research in the fourth industrial revolution" 2017 *Monash University Law Review* 567

Kabaseke "Equality or pipe dreams: gender and inclusive development under the african union's agenda 2063" 2018 *Journal of comparative law in Africa* 73

Laubscher "Equal pay for equal value: A South African Perspective" 2016 *Industrial Law Journal* 804

Mokoena "Are uber drivers employees or independent contractors? A comparative analysis" 2018 *Industrial Law Journal* 1453

Theron "Decent work and the crisis of labour law in South Africa" 2014 *Industrial Law Journal* 1829

BOOKS

Boyer L *The Robot in the Next Cubicle: What You Need to Know to Adapt and Succeed in the Automation Age* Prometheus books, New York (2018)

Burchell M *The Law of Defamation* Juta, Cape Town (1985)

Currie and de Waal *The Bill of Rights Handbook* Juta, Cape Town (2005) 5th ed

Currie and de Waal *The Bill of Rights Handbook* Juta, Cape Town (2013) 6th ed

Dhakal S *the transition from graduation to work* Springer, Singapore (2019)

Gleason *Higher Education in the Era of the Fourth Industrial Revolution* Palgrave Macmillan, Singapore (2018)

Guerra A *Organizational Transformation and Managing Innovation in the Fourth Industrial Revolution* IGI Global, United States (2019)

Grogan *Workplace Law* Juta, Cape Town (2014)

Johannessen A *The workplace of the future-the fourth industrial revolution, the precariat and the death of hierarchies* Routledge, London (2019)

Kumar, Zindani J and Davim *Industry 4.0 Developments towards the Fourth Industrial Revolution* Springer, Singapore (2019)

Le Roux, Orleyn and Rycroft *Sexual harassment in the workplace: law, policies and processes* Butterworths, Durban (2005).

Schwab K *The fourth industrial revolution* Penguin Random House, UK (2017)

INTERNET SOURCES

Adams “Fourth industrial risks- leaving women behind”<https://www.thesouthafrican.com/business-finance/fourth-industrial-revolution-risks-leaving-women-behind> (2019-09-11)

Bhardwaj and Imafidon “Women and the fourth industrial revolution”<https://www.chathamhous.org/expert/women-and-fourth-industrial-revolution> (2019-09-11)

Chiweshe “Fourth industrial revolution: what’s in it for women in Africa”<https://www.africaportal.org/publications/fourth-industrial-revolution-whats-it-african-women> (2019-09-11)

The Oxford Dictionary of English <http://www.mobisystems.com> (2019-09-26)

INTERCONTINENTAL SOURCES

SADC Protocol on Gender and Development, 2016

INTERNATIONAL SOURCES

Canadian Charter of rights and freedoms, 1982

Convention on the Elimination of All Forms of Discrimination against Women, 1981

International Labour Organisation Equal Remuneration convention 100, 1951

International Covenant on Economic, Social and Cultural Rights, 1966

Universal Declaration of Human Rights, 1948